

Taxpayer convicted of making false statements in connection with holdover applications for provisional tax and falsely claiming deductions of expenses of self-education and approved charitable donations

A taxpayer was convicted today (December 10) at the Tuen Mun Magistrates' Courts of wilfully with intent evading salaries tax. Sentencing was adjourned to December 24 pending a community service order report. The defendant was remanded in custody.

The defendant, aged 35, is a senior sales representative of a telecommunications company (the Employer). He pleaded guilty to 10 counts of evading tax, wilfully with intent, by signing "Application for Holdover of Provisional Tax" forms (the Application Forms) for the years of assessment 2007-08 to 2010-11 and the tax returns for the years of assessment 2011-12 to 2016-17, without reasonable grounds for believing the amounts of income for the relevant periods stated in the Application Forms and the information on the claims of deductions of expenses of self-education and approved charitable donations in the tax returns were true, contrary to section 82(1)(d) of the Inland Revenue Ordinance (Cap. 112) (IRO).

The court heard that the defendant stated in each of the Application Forms that his income would be reduced because of unemployment and applied for holding over of the provisional salaries tax for the years of assessment 2007-08 to 2010-11. An investigation by the Inland Revenue Department (IRD) revealed that the defendant was still employed by the Employer throughout the period from April 1, 2007, to March 31, 2011, and the amounts of income the defendant stated in the Application Forms were less than those he had received from the Employer. The total amount of income understated by the defendant for the corresponding periods of the four years of assessment was \$687,816 and the total provisional salaries tax undercharged was \$146,223.

In addition, the defendant claimed in his tax returns deductions of expenses of self-education in amounts ranging from \$56,000 to \$78,200 each year for the years of assessment 2011-12 to 2014-15, and approved charitable donations in amounts ranging from \$52,200 to \$148,680 each year for the years of assessment 2011-12 to 2016-17. Other than an allegation that he had made some donations to two institutions, the defendant failed to produce sufficient details or any evidence in support of his deduction claims for expenses of self-education and approved charitable donations. The IRD subsequently found that the defendant had made a deductible charitable donation of \$102 for the year of assessment 2015-16. The defendant's total false deduction claims for expenses of self-education and approved charitable

donations for the six years of assessment amounted to \$961,598 and the total tax evaded was \$148,419.

The IRO states that taxpayers may apply to the Commissioner of Inland Revenue to have the payment of provisional tax held over on specified grounds. However, taxpayers are required to provide correct information in support of the applications. In addition, the IRO provides that expenses of self-education paid for prescribed courses or examination fees paid to specified education providers or associations, and a donation of money to any charitable institution or trust of a public character which is exempt from tax under section 88 of the IRO or to the Government for charitable purposes, are tax deductible. Documentary evidence in support of deduction claims should be retained for seven years (i.e. six years after the expiration of the relevant year of assessment). The IRD will conduct random checks on deduction claims. Taxpayers will be asked to produce supporting documents when their cases are selected for audit.

A spokesman for the IRD reminded taxpayers that tax evasion is a criminal offence under the IRO. Upon conviction, the maximum penalty for each charge is three years' imprisonment and a fine of \$50,000 plus a further fine of three times the amount of tax evaded.